

SUBCHAPTER A—GENERAL

PART 0—GENERAL STATEMENTS OF POLICY [RESERVED]

PART 1—RULEMAKING; POLICY AND PROCEDURES

Subpart A—General

Sec.

- 1.1 Purpose.
- 1.2 Definitions.
- 1.3 Scope.
- 1.4 Policy and procedures.
- 1.5 Rules docket.
- 1.6 Ex parte communications.
- 1.7 Regulations agendas.
- 1.8 Regulations review.
- 1.9 Regulatory impact analyses.

Subpart B—Procedures for Rulemaking

- 1.10 Initiation of rulemaking.
- 1.11 Advance notice of proposed rulemaking.
- 1.12 Notice of proposed rulemaking.
- 1.13 Participation by interested persons.
- 1.14 Additional rulemaking proceedings.
- 1.15 Hearings.
- 1.16 Adoption of a final rule.
- 1.17 Petitions for reconsideration.
- 1.18 Petition for rulemaking.

AUTHORITY: 5 U.S.C. 551, 552, 553; 5 U.S.C. 601, *et seq.*; E.O. 12291. Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

SOURCE: 46 FR 32584, June 24, 1981, unless otherwise noted.

Subpart A—General

§ 1.1 Purpose.

(a) This part contains the basic policies and procedures of the Federal Emergency Management Agency (FEMA) for adoption of rules. These policies and procedures incorporate those provisions of section 4 of the Administrative Procedure Act (APA) (5 U.S.C. 553) which FEMA will follow. This part and internal FEMA Manuals implement Executive Order 12291.

(b) Rules which must be published are described in section 3(a) of the APA, 5 U.S.C. 552(a). FEMA implementation of paragraph (a) is contained in 44 CFR part 5, subpart B.

(c) This part contains policies and procedures for implementation of the

Regulatory Flexibility Act which took effect January 1, 1981.

(d) A FEMA Manual No. 1140.1, "The Formulation, Drafting, Clearance, and Publication of FEDERAL REGISTER Documents" has been issued describing the internal procedures including policy level oversight of FEMA for:

(1) Publishing the semiannual agenda of significant regulations under development and review;

(2) Making initial determinations with respect to significance of proposed rulemaking;

(3) Determining the need for regulatory analyses; and

(4) Reviewing existing regulations, including the reviews required by the Regulatory Flexibility Act.

(e) As the FEMA Manual deals with internal management it is not subject to the requirements either of 5 U.S.C. 552 or 553. Its provisions are not part of this rule and reference to it is informative only.

[46 FR 32584, June 24, 1981, as amended at 49 FR 33878, Aug. 27, 1984]

§ 1.2 Definitions.

(a) *Rule* or *regulation* means the whole or a part of any agency statement of general applicability and future effect designed to (1) implement, interpret, or prescribe law or policy, or (2) describe procedures or practice requirements. It includes any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term *rule* does not include a rule of particular applicability relating to rates, wages, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances. For purposes of this part the term *rule* does not include regulations issued with respect to a military or foreign affairs function of the United States.

§ 1.3

(b) *Rulemaking* means the FEMA process for considering and formulating the issuance, amendment or repeal of a rule.

(c) *Director* means the Director, FEMA, or an official to whom the Director has expressly delegated authority to issue rules.

(d) *FEMA* means Federal Emergency Management Agency.

(e) *Major rule* means any regulation that is likely to result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

[46 FR 32584, June 24, 1981, as amended at 49 FR 38118, Sept. 27, 1984]

§ 1.3 Scope.

(a) This part prescribes general rulemaking procedures for the issuance, amendment, or repeal of rules in which participation by interested persons is required by 5 U.S.C. 553 or other statutes, by Executive Order 12291, by FEMA policy, or by § 1.4 of this part.

(b) Any delegation by the Director of authority to issue rules may not be further redelegated, unless expressly provided for in the delegation.

(c) This part does not apply to rules issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 1.4 Policy and procedures.

(a) In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, FEMA, to the extent permitted by law, shall adhere to the following requirements:

(1) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(2) Regulatory action shall not be undertaken unless the potential benefits

44 CFR Ch. I (10–1–02 Edition)

to society for the regulation outweigh the potential costs to society;

(3) Regulatory objectives shall be chosen to maximize the net benefits to society;

(4) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(5) FEMA shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular entities affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

(b) It is the policy of FEMA to provide for public participation in rulemaking regarding its programs and functions, including matters that relate to public property, loans, grants, or benefits, or contracts, even though these matters are not subject to a requirement for notice and public comment rulemaking by law.

(c) FEMA will publish notices of proposed rulemaking in the FEDERAL REGISTER and will give interested persons an opportunity to participate in the rulemaking through submission of written data, views, and arguments with or without opportunity for oral presentation.

(d) In order to give the public, including small entities and consumer groups, an early and meaningful opportunity to participate in the development of rules, for a number of regulations the Director will employ additional methods of inviting public participation. These methods include, but are not limited to, publishing advance Notices of Proposed Rulemaking (ANPR), which can include a statement with respect to the impact of the proposed rule on small entities; holding open conferences; convening public forums or panels, sending notices of proposed regulations to publications likely to be read by those affected and soliciting comment from interested parties by such means as direct mail. An ANPR should be used to solicit public comment early in the rulemaking process for significant rules.

(e) It is the policy of FEMA that its notices of proposed rulemaking are to afford the public at least sixty days for

Federal Emergency Management Agency

§ 1.6

submission of comments unless the Director makes an exception and sets forth the reasons for the exception in the preamble to the notice of proposed rulemaking. This period shall also include any period of review required by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980.

(f) Unless required by statute or Executive Order, notice and public procedure may be omitted if the Director, for good cause, determines in a particular case or class of cases that notice and public procedure is impractical, unnecessary or contrary to the public interest and sets forth the reason for the determination in the rulemaking document or, for a class of cases, in a published rule or statement of policy. In a particular case, the reasons for the determination will be stated in the rulemaking document. Notice and public procedure may also be omitted with respect to statements of policy, interpretative rules, rules governing FEMA's organization or its own internal practices or procedures, or if a statute expressly authorizes omission.

(g) A final substantive rule will be published not less than 30 days before its effective date unless it grants or recognizes an exemption or relieves a restriction or unless the rulemaking document states good cause for its taking effect less than 30 days after publication. Statements of policy and interpretative rules will usually be made effective on the date of publication.

(h) This part shall not apply to any regulation that responds to an emergency situation, provided that, any such regulation shall be reported to the Director, Office of Management and Budget, as soon as is practicable. FEMA shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to such a rule, and the agency shall prepare and transmit, if needed, as soon as is practicable a Regulatory Impact Analysis of any such major rule.

[46 FR 32584, June 24, 1981, as amended at 49 FR 38119, Sept. 27, 1984; 50 FR 40004, Oct. 1, 1985]

§ 1.5 Rules docket.

(a) Documents which are public records and which are a part of a specific rulemaking procedure, including but not limited to, advance notices of proposed rulemaking, notices of proposed rulemaking, written comments addressed to the merits of a proposed rule, and comments received in response to notices, or withdrawals or terminations of proposed rulemaking, petitions for rulemaking, requests for oral argument in public participation cases, requests for extension of time, grants or denials of petitions or requests, transcripts or minutes of informal hearings, final rules and general notices shall be maintained in the Office of General Counsel. All public rulemaking comments should refer to the docket number which appears in the heading of the rule and should be addressed to the Rule Docket Clerk, Federal Emergency Management Agency, Office of General Counsel.

(b) Documents which are a part of a specific rulemaking proceeding are public records. After a docket is established, any person may examine docketed material at any time during established hours of business and may obtain a copy of any docketed material upon payment of the prescribed fee. (See part 5 of this chapter.)

[46 FR 32584, June 24, 1981, as amended at 48 FR 44542, Sept. 29, 1983]

§ 1.6 Ex parte communications.

In rulemaking proceedings subject only to the procedural requirements of 5 U.S.C. 553:

(a) All oral communications from outside FEMA of significant information and argument respecting the merits of a proposed rule, received after notice of proposed informal rulemaking and in its course by FEMA or its offices and divisions or their personnel participating in the decision, should be summarized in writing and placed promptly in the Rules Docket File available for public inspection.

(b) FEMA may conclude that restrictions on ex parte communications in particular rulemaking proceedings are necessitated by consideration of fairness or for other reasons.

§ 1.7 Regulations agendas.

(a) The FEMA semi-annual agenda called for by Executive Order 12291 will be part of the Unified Agenda of Federal Regulations published in April and October of each year.

(b) In accordance with 5 U.S.C. 605, the regulatory flexibility agenda required by 5 U.S.C. 602 and the list of rules, if any, to be reviewed pursuant to 5 U.S.C. 610 shall be included in the FEMA semiannual agenda described in paragraph (a) of this section.

(c) The semiannual agenda shall, among other items, include:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking.

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of the Order and a brief discussion of each such regulation.

[46 FR 32584, June 24, 1981, as amended at 49 FR 33878, Aug. 27, 1984]

§ 1.8 Regulations review.

(a) As part of the semiannual agenda described in § 1.7 of this part, FEMA will publish in the FEDERAL REGISTER and keep updated a plan for periodic review of existing rules at least within 10 years from date of publication of a rule as final. This includes those that have significant impact on a substantial number of small entities.

(b) The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, including minimizing any significant economic impact of the rules upon a substantial number of small entities.

(c) In reviewing rules FEMA shall consider the following factors:

(1) The continued need for the rule;

(2) The nature, type and number of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule, including need for review of language for clarity;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

§ 1.9 Regulatory impact analyses.

(a) FEMA shall, in connection with any major rule, prepare and consider a Regulatory Impact Analysis. Such analysis may be combined with the Regulatory Flexibility Analysis described in §§ 1.12(f) and 1.16(c) of this part.

(b) FEMA shall initially determine whether a rule it intends to propose or to issue is a major rule and, if a major rule, shall prepare Regulatory Impact Analyses and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director, Office of Management and Budget, as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director, Office of Management and Budget, at least 60 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, FEMA shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director, Office of Management and Budget, at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, FEMA shall, unless an exemption has been granted, submit to the Director, Office of Management and

Federal Emergency Management Agency

§ 1.12

Budget, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(c) To permit each major rule to be analyzed in light of the requirements stated in section 2 of Executive Order 12291, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (c)(4) of this section, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in section 2 of Executive Order 12291.

Subpart B—Procedures for Rulemaking

§ 1.10 Initiation of rulemaking.

Rulemaking may be initiated on the Director's motion or upon motion of an official to whom rulemaking authority has been delegated. Rulemaking may also be initiated on the petition of any interested person in accordance with the provisions of § 1.18. Interested person includes a Federal, State, or local government or government agency.

§ 1.11 Advance notice of proposed rulemaking.

An Advance Notice of Proposed Rulemaking will be published in the FEDERAL REGISTER and contains:

(a) A description of the proposed new program or program changes, and why they are needed;

(b) A presentation of the major policy issues involved;

(c) A request for comments, both specific and general, on the need for the proposed rule and the provisions that the rule might include;

(d) If appropriate, a list of questions about the proposal which seeks to bring out detailed comments;

(e) If known, an estimate of the reporting or recordkeeping requirements, if any, that the rule would impose; and

(f) The time within which comments may be submitted to the Rules Docket Clerk, Federal Emergency Management Agency, Washington, DC 20472.

[46 FR 32584, June 24, 1981, as amended at 48 FR 44542, Sept. 29, 1983; 49 FR 33879, Aug. 27, 1984]

§ 1.12 Notice of proposed rulemaking.

Each notice of proposed rulemaking required by statute, executive order, or by § 1.4 will be published in the FEDERAL REGISTER and will include:

(a) The substance or terms of the proposed rule or a description of the subject matter and issues involved.

(b) A statement of how and to what extent interested persons may participate in the proceeding.

(c) Where participation is limited to written comments, a statement of the time within which such comments must be submitted.

(d) A reference to the legal authority under which the proposal is issued.

(e) In a proceeding which has provided Advance Notice of Proposed Rulemaking, an analysis of the principal issues and recommendations raised by the comments, and the manner in which they have been addressed in the proposed rulemaking.

(f)(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination;

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis; and

(3) The initial regulatory flexibility analysis or a summary thereof as required by the Regulatory Flexibility